

**To:** "Nawi, David" [David\_Nawi@ios.doi.gov]  
**Cc:** CN=Karen Schwinn/OU=R9/O=USEPA/C=US@EPA[]  
**Bcc:** []  
**From:** CN=Tom Hagler/OU=R9/O=USEPA/C=US  
**Sent:** Tue 1/3/2012 8:33:27 PM  
**Subject:** RE: Jumping the Gun ? Checkpoint A for the NEPA/404 BDCP Integration MOU

I have on my calendar another "Chuck Gardner" call at 9:30 am on Thursday, January 19th. These are the meetings in which DWR and DWR counsel were reluctant to allow broader Federal participation (that is, no DOI or Commerce, which is not really a viable argument given the below).

However, I'm not sure Mike Nepstad will be there, and we may not have a quorum.

So maybe pencil that time in, and we'll see how this develops over the next week.

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From: "Nawi, David" <David\_Nawi@ios.doi.gov>  
To: Tom Hagler/R9/USEPA/US@EPA  
Cc: Karen Schwinn/R9/USEPA/US@EPA  
Date: 01/03/2012 12:23 PM  
Subject: RE: Jumping the Gun ? Checkpoint A for the NEPA/404 BDCP Integration MOU

Happy New Year Tom (and Karen).

A quick question: Is there another meeting scheduled with the Corps, DWR and EPA on the 404/408 process? If so when? Based on our earlier discussions and what you have written below, I think we need to be clear on the attendance of the federal lead agencies.

David

From: Tom Hagler [Hagler.Tom@epamail.epa.gov]  
Sent: Tuesday, January 03, 2012 11:00 AM  
To: Nepstad, Michael G SPK  
Cc: Enos, Cassandra; Hoffman-Floerke, Dale; Marc Ebbin; Erin Foresman; Jewell, Michael S SPK; Robershotte, Paul J SPD; Crothers, Cathy; Morrow, Michelle M; Karen Schwinn; Chuck Gardner;

KBogdan@

Subject: Jumping the Gun ? Checkpoint A for the NEPA/404 BDCP Integration MOU

Happy New Year to everyone!

I think we are collectively getting a little ahead of ourselves in this process.

I went back and actually read the current draft NEPA/404 BDCP Integration MOU. The most current version that was distributed to all of the agencies was the Nepstad "final" dated September 7, 2011. Since that date, the MOU has been lost in the Corps legal discussions about Section 408. I will send this out to the distribution list by separate email.

I would recommend that everyone take a look at it, since it is the only document guiding the process at this point. Two items in particular are relevant to our attempts to move through Checkpoint A.

(1) The MOU includes, as "lead agencies," not only DWR but also BOR, FWS, and NMFS. That makes sense, given that all five agencies are Signatories to the MOU. But we seem to have collectively dropped a stitch or two here by not bringing those other agencies into the process earlier. As the MOU states (at Table 1 and Figure 1, at pages 7 and 8), the first checkpoint is initiated by the "lead agencies" when the lead agencies initiate a "coordination meeting."

So we need to do some catch up with those agencies and get the MOU's Checkpoint A process started.

(2) The MOU explicitly defines Checkpoint A as "NEPA Purpose and Need Statement and USACE permit process Basic and Overall Purpose Statements for the Initial Projects." Nothing more, nothing less. When I was reading the DWR email again today, I'm having a hard time figuring out what part of it constitutes the "Basic and Overall Purpose Statements for the Initial Projects." It may be in there, maybe not, but it needs to be more explicit, since that is what the MOU requires.

So I think we kind of jumped the gun with our victory celebration. Let's talk about this when everyone gets back from their respective holidays.

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